

ENTERED

December 05, 2016

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

WENDELL HARRISON,
(SPN #02456003)

Plaintiff,

vs.

JUDGE M. JACKSON,

Defendant.

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CIVIL ACTION NO. H-16-3528

MEMORANDUM AND OPINION

Wendell Harrison, an inmate of the Harris County Jail (“HCJ”), sued in November 2016 alleging a denial of adequate due process. Harrison is representing himself and has not paid the filing fee. He sues Judge Jackson of the 339th Judicial District Court of Harris County, Texas, who presided over Harrison’s revocation hearing. The threshold issue is whether Harrison’s claims can proceed.

Harrison alleges that he posted bond on December 1, 2015 and was released from the HCJ. On December 2, 2015, he made his court appearance before Judge Jackson in the 339th Judicial District Court of Harris County, Texas. The bailiff informed Harrison that he would be arrested on two felony charges. Online research reveals that Harrison was charged with being a felon in possession of a weapon and with manufacturing and delivering a controlled substance (Cause Number 1490205 and Cause Number 1449023; <https://apps.jims.hctx.net/sopublic/index.jsp>). Harrison alleges that Judge Jackson violated his civil rights. Harrison seeks unspecified injunctive relief as well as \$20 million in compensatory damages and \$180 million in punitive damages from Judge Jackson.

A federal court has the authority to dismiss a complaint in which the plaintiff is proceeding without prepaying fees if the court determines that it is frivolous. 28 U.S.C. § 1915(e)(2)(B)(i). A complaint is frivolous if it lacks an arguable basis in law or fact. *See Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Richardson v. Spurlock*, 260 F.3d 495, 498 (5th Cir. 2001) (citing *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997)). “A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist.” *Davis v. Scott*, 157 F.3d 1003, 1005 (5th Cir. 1998) (quoting *McCormick v. Stalder*, 105 F.3d 1059, 1061 (5th Cir. 1997)).

Judges have absolute immunity when they perform a normal judicial function, unless they are acting in the clear absence of all jurisdiction. *Stump v. Sparkman*, 435 U.S. 349, 357-60 (1978). The nature of the function performed governs the immunity analysis. *Forrest v. White*, 484 U.S. 219, 227-229 (1988) (denying judge absolute immunity when performing administrative rather than judicial duties). A judge is not deprived of immunity because the action he took was erroneous, malicious, or exceeded his authority. 435 U.S. at 357.

Harrison challenges Judge Jackson for her actions in presiding over the motion to revoke Harrison’s bail. Reviewing and denying motions is a normal judicial function. Harrison’s allegations focus on the motion to revoke bail that was properly before Judge Jackson. The alleged acts arose out of the judge’s handling of Harrison’s case. The challenged acts were judicial acts, and Harrison does not allege, nor does the record support, a clear absence of jurisdiction. Harrison’s claims against Judge Jackson lack merit because Harrison is seeking relief from a party who is immune from suit.

The action filed by Wendell Harrison (SPN #02456003) lacks an arguable basis in law. His

claims are dismissed with prejudice under 28 U.S.C. § 1915(e)(2)(B)(i). Any remaining pending motions are denied as moot.


The HCJ must deduct twenty percent of each deposit made to Harrison's inmate trust account and forward payments to the court on a regular basis, provided the account exceeds \$10.00, until the filing fee obligation of \$350.00 is paid in full.

The Clerk will provide a copy of this order by regular mail, facsimile transmission, or e-mail to:

(1) Sergeant Tom Katz, Inmate Trust Fund, 1200 Baker Street, Houston, Texas 77002, Fax 713-755-4546; and

(2) the District Clerk for the Eastern District of Texas, Attention: Manager of the Three-Strikes List, Lori_stover@txed.uscourts.gov.

SIGNED on December 2, 2016, at Houston, Texas.



Lee H. Rosenthal
Chief United States District Judge